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July 21, 2017

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VIA EMAIL

Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination and Legal Administration
Federal Election Commission
Attn: Mary Beth deBeau, Paralegal
999 E Street, NW
Washington, DC 20436

Re: *MUR 7250*

Dear Mr. Jordan:

We write as counsel to Montana Writers for Public Lands PAC; Rick Bass, Treasurer; Seabring Davis, Assistant Treasurer; and Brian Schott ("Respondents"), regarding the Complaint filed on May 23, 2017 by Joe Dooling, Chairman of the Lewis and Clark County Republican Central Committee. The Complaint's central allegation – that Respondents made coordinated communications in excess of the contribution limits supporting Rob Quist in connection with the May 25 special election in Montana – is based on an erroneous press report. To the contrary, Respondents' communications were prepared without coordination with Rob Quist, his campaign committee, Rob Quist for Montana, or their agents (collectively, the "Quist Campaign"). Moreover, contrary to the allegations in the complaint, Montana Writers did register as a PAC and has reported its sources of financial support and disbursements on the public record. Accordingly, the Commission should find no reason to believe that Respondents violated the Act, and should close the file.

FACTUAL BACKGROUND

Montana Writers for Public Lands, PAC ("Montana Writers") was started by a group of Montana writers in May 2017 to advocate for the protection of Montana's public lands. The intent was to use the incidence of the upcoming special election - a time when individuals in Montana would be more

attuned to issues of public concern – as a mechanism for engaging the public on this issue of critical public concern.¹ Towards this end, Montana Writers compiled a series of original essays and testimonials, written on an uncompensated and volunteer basis, advocating for protecting Montana's public lands, and published the essays as a 24-page publication that was distributed in three Montana newspapers on May 21, 2017. A copy of the insert is attached as Attachment A. Out of forty-three essays contributed to the effort, only two identified any federal candidate, and only one expressly advocated for the election of a federal candidate.² The publication identified by name each author who contributed written work product to the effort, as well as each individual who had made monetary contributions to the effort. All told, Montana Writers spent \$9,236.73 on distributing the insert. Montana Writers also established a website at <http://www.wetakeourstand.org>, and included the url on each page of the publication.

Though the publication supported Quist's position on the issue of public lands, and contained de minimis content that expressly advocated his election, it was prepared and distributed independently from the Quist Campaign. The Montana Writers' effort was organized, on an uncompensated, volunteer basis, by professional writers Rick Bass, Seabring Davis, and Brian Schott. The Quist Campaign did not request or suggest that Montana Writers prepare and distribute the publication,³ nor did it assent to Montana Writers' plans.⁴ Moreover, all decisions regarding the distribution of the publication were made by Respondents. Those decisions were made without input from the Quist Campaign, and were not made based on any nonpublic information provided by the Quist Campaign.⁵ While each author was responsible for the content of the section of the publication bearing his or her name, for their part, Respondents determined the content of the sections they wrote without input from the Quist Campaign, and those sections were not based on any nonpublic information provided by the Quist campaign.⁶ As far as Respondents are aware, none of the contributors to the effort coordinated their essays with the Quist Campaign either.⁷ And Respondents were not current or former employees or

¹ See Attachment A at 1.

² See Davis Decl. ¶ 1.

³ See *id.* ¶ 4.

⁴ *Id.* ¶ 5.

⁵ *Id.* ¶ 6.

⁶ *Id.* ¶ 8.

⁷ *Id.*

contractors of, or vendors, to the Quist Campaign.⁸ Montana Writers learned about Quist's position on the issue of public lands based on his publicly announced positions.⁹

This was the organizers' first foray into advocacy of this kind. They were unaware of the Act's reporting and registration requirements, and they believed that their publication, as one focused primarily on issues of public concern, was protected First Amendment speech that was not subject to regulation in any event.¹⁰ However, on May 20, 2017, before the publication was distributed, Respondents were informed by a friend that they may be required to register as a PAC with the Commission. Accordingly, Montana Writers promptly prepared and filed a Statement of Organization with the Commission.¹¹ It since filed a post-general report with the Commission detailing its sources of support and the disbursements it made in connection with that election.

LEGAL BACKGROUND AND ANALYSIS

The Complaint makes four allegations against Respondents: (1) that the publication was a coordinated communication that resulted in an excessive contribution to Quist; (2) that Respondents failed to disclose the value of their contributions to the Quist campaign or the sources of its support; (3) that Respondents failed to register as a political committee; and (4) that Respondents failed to file an independent expenditure report with the Commission. Each is addressed in turn below.

1. The Publication Was Not A Coordinated Communication

Under Commission rules, a public communication paid for by a third party will be considered a coordinated communication – and therefore, an in-kind contribution to a candidate – if it contains certain content and is made following certain conduct.¹² The conduct standard is met if a communication is (1) made at the request or suggestion of a candidate or authorized committee; (2) the communication is made at the request or suggestion of the person paying for the communication and the candidate or authorized committee assents to the suggestion; (3) the candidate or authorized committee

⁸ *Id.* ¶ 9.

⁹ *Id.* ¶ 2.

¹⁰ *Id.* ¶ 3.

¹¹ *Id.*

¹² 11 C.F.R. 109.21(a).

is materially involved in decisions regarding the content, intended audience, means, mode, media outlet, timing, frequency, time or prominence of the communication; (4) the communication is created, produced or distributed after one or more substantial discussions about the communication between the payor and the candidate or authorized committee, in which nonpublic information about the candidate's plans, projects, activities or needs are communicated to the payor and that information is material to the creation, production, or distribution of the communication; (5) the communication is created, produced or distributed by a commercial vendor who has, within the past 120 days, performed certain services for the candidate, or (6) the communication is paid for by a former employee or contractor to, or the employer of a former employee or contractor to, the candidate.¹³

The Complaint provides no specific facts to demonstrate that any of the content prongs were met here. To the contrary, as stated in Seabring Davis's declaration, the publication was organized by three professional writers, Rick Bass, Seabring Davis, and Brian Schott. The Quist Campaign did not request or suggest that Montana Writers prepare and distribute the publication, nor did it assent to Montana Writers' plans.¹⁴

Nor are the "material involvement" or "substantial discussion" prongs met. All decisions regarding the distribution of the publication were made by Respondents without input from the Quist Campaign, and those decisions were not made based on any nonpublic information provided by the Quist Campaign.¹⁵ Moreover, while each author was responsible for the content of the section of the publication bearing his or her name, for their part, Respondents determined the content of the sections they wrote without input from the Quist Campaign, and not based on any nonpublic information provided by the Quist Campaign. And, as far as Respondents are aware, no other contributor to the effort did this either.¹⁶

Lastly, Respondents were not current or former employees or contractors of, or vendors to, the Quist Campaign – nor, to their knowledge, were any of the other writers who contributed to the effort. Thus, the common vendor and former employee/contractor prongs were not met either.¹⁷

¹³ *Id.* § 109.21(a).

¹⁴ See Davis Decl. ¶¶ 4, 5.

¹⁵ *Id.* ¶ 6.

¹⁶ *Id.* ¶ 8.

¹⁷ *Id.* ¶ 9.

The allegation of coordination made in the complaint was based on a single line from a newspaper article that appeared in the *Bozeman Daily Chronicle*, which states that Ms. Davis told the paper that “[t]he insert’s distribution areas in southwest and northwest Montana are places where, consulting with the Quist campaign, the group thought they were likely to reach undecided voters, Davis said.” However, this line in the newspaper was incorrect and was apparently based on the reporter misunderstanding his conversation with Ms. Davis. While Ms. Davis did talk to the reporter, she did not tell him that she had consulted with the Quist campaign.¹⁸ During her conversation with the reporter, she did mention that she had discussed the matter with a woman named Joanne Gardner, who had, on an uncompensated volunteer basis, organized a fundraising event for the Quist campaign.¹⁹ The *Daily Chronicle* reporter apparently mistook this to mean that Montana Writers consulted with the Quist campaign – but it did not.

In any case, Ms. Davis’s communication with Ms. Gardner did not result in a coordinated communication. First, when she spoke to Ms. Gardner, Ms. Davis did not understand Ms. Gardner to be acting on behalf of the Quist campaign.²⁰ Following its receipt of this complaint, Montana Writers conducted an investigation into Ms. Gardner’s role with the campaign, and confirmed that her role was limited to organizing a fundraising event for the campaign; that she played no role in, and had no knowledge of, the Quist Campaign’s nonpublic plans, projects, activities or needs; and that she did not have any authority, express or implied, to be involved in the Quist Campaign’s own advertising, or the advertising decisions of others. Thus, Ms. Gardner was not an agent of the Quist Campaign.²¹ Second, the conversation with Ms. Gardner had no material impact on decisions regarding the content or distribution of the publication: while Ms. Gardner had suggested to Ms. Davis that the publication be distributed in Great Falls, Respondents rejected this suggestion and, instead distributed the communication elsewhere, based on the available budget and their own internal deliberations.²² Thus, even if Ms. Gardner was deemed an agent of the Quist Campaign – which she was not -- her involvement

¹⁸ *Id.* ¶ 11.

¹⁹ *Id.* ¶ 11.

²⁰ *Id.* ¶ 12.

²¹ 11 C.F.R. § 109.3(b).

²² Davis Decl. ¶ 13.

would not have triggered the "material involvement" or "substantial discussion" prongs because it was in no way material to the communication.²³

2. Respondents Have Properly Disclosed Their Sources Of Support

Next, the Complaint argues that Respondents "have not disclosed the value of their contributions to the Quist campaign nor has the reporting information required under federal law been obtained and reported." Complaint at 5. The Complaint misses the mark. As described above, Respondents did not make any contributions to the Quist Campaign – and, accordingly, there were no contributions to the Quist campaign to report. Moreover, as described below, Respondents filed a Statement of Organization with the Commission on May 22, and have since filed a report disclosing their receipts and disbursements. Accordingly, the Complaint's second allegation must also be rejected.

3. Respondents Have Registered With The Commission

Third, the Complaint alleges that Respondents violated the Act by failing to register as a political committee with the Commission. This allegation, too, must be dismissed, as Respondents filed a Statement of Organization with the Commission on May 22, 2017.

Though not raised by the complaint, Montana Writers is now aware that it did not register until nineteen days after it raised more than \$1,000. However, the Commission should not find reason to believe that Respondents registered with the Commission late, as Respondents contend that they were not required to register at all. Though the Act defines a political committee as a "committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year," the Commission will not impose political committee status on an entity unless its "major purpose" is "the nomination or election of a Federal candidate."²⁴ This is "necessary to avoid the regulation of activity 'encompassing both issue discussion and advocacy of a political result.'"²⁵ A careful review of the publication demonstrates that its major purpose was issue advocacy, and not electoral advocacy. The front page makes this clear: its purpose was to "endorse . . . Rob Quist's position" on the issue of public

²³ 11 C.F.R. § 109.21(d)(2), (3); *Coordinated and Independent Expenditures*, 68 Fed. Reg. 433-34 (Jan. 3, 2003).

²⁴ *Political Committee Status*, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007).

²⁵ *Id.* (quoting *Buckley v. Valeo*, 424 U.S. 1, 79 (1976)).

lands.²⁶ Only two of the forty-three essays identified a federal candidate, and only one of them (taking up a quarter of a page in a twenty-four page insert) expressly advocated for a particular candidate. The rest of the piece is squarely devoted to pure issue advocacy. Accordingly, as a matter of constitutional law and Commission policy, Montana Writers was not required to register as a political committee.

Even if the Commission disagrees with this conclusion, it should decline to pursue enforcement in this case. The Committee was a small one, with only a small amount of activity. Respondents lacked any previous experience in the political arena, and when they were informed of the fact that registration might be required in this case, they promptly did so. Most importantly, the disclosure objectives of the Act were met in this case. Far from being the “dark money, shadowy and unaccountable organization[]” alleged in the Complaint,²⁷ Respondents identified every writer who contributed to the publication, and every individual who provided funds to the effort, on the publication itself. And registering on May 22 did not cause Montana Writers to miss a disclosure report.²⁸ In past matters like this, where Respondents acted in good faith and the disclosure objectives of the Act have been substantially met, the Commission has declined to pursue enforcement.²⁹ To do otherwise in this case would unduly deter ordinary citizens from expressing their views on matters of important public concern. Such a result would pose serious First Amendment concerns.³⁰

4. **The Commission Should Not Find Reason To Believe That Respondents Failed To File An Independent Expenditure Report**

Lastly – in a tacit admission that the publication was not coordinated with the Quist Campaign – the Complaint alleges that Respondents failed to file an independent expenditure report for the publication.³¹ Respondents regret this omission, but respectfully contend that the Commission

²⁶ Attachment A at 1 (emphasis added).

²⁷ Complaint at 6.

²⁸ Montana Writers’ first expenditure in connection with the special election was publicly distributed on May 21. Thus, regardless of when it registered, the first required report was the post-special general report, which Montana Writers filed timely on June 24, 2017. See *Filing Dates for the Montana Special Congressional Election*, 82 Fed. Reg. 13,599 (Mar. 14, 2017).

²⁹ See, e.g., MUR 7020, MUR 7116, MUR 6785, MUR 6533.

³⁰ See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 324 (2010) (“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney . . . before discussing the most salient political issues of our day.”)

³¹ Complaint at 6.

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should not find reason to believe Respondents violated the Act. As described above, Respondents lacked experience with the requirements of the Act and were not aware that an independent expenditure report was required. Once Respondents learned of the requirement, they promptly filed the independent expenditure report. The amount of activity at issue was small. And the Act's disclosure obligations were, again, substantially met in this case, where the publication identified all of the individual contributors to the effort and the distribution and cost of the publication were publicly announced in advance.³² In circumstances like this, the Commission has declined to pursue enforcement,³³ and it should do the same here.

CONCLUSION

For the reasons describe above, the Commission should find no reason to believe that Respondents violated the Act, and should dismiss this matter promptly.

Sincerely,



Andrew Harris Werbrock
Thomas A. Willis

AHW:CT
(00313644-2)
Attachment

³² See Eric Dietrich, "Montana writers, worried about public lands, to publish pro-Quist insert," *Bozeman Daily Chronicle* (May 20, 2017).

³³ See, e.g., MUR 7128.

DECLARATION OF SEABRING DAVIS

I, SEABRING DAVIS, declare and state as follows:

1. My name is Seabring Davis. I am a resident of Livingston, Montana and am a professional writer. I currently serve as the Assistant Treasurer of Montana Writers for Public Lands.
2. In May 2017, I, along with fellow writers Rick Bass and Brian Schott, all on an uncompensated, volunteer basis, organized a group of writers to write a series of original essays and testimonials advocating for the protection of our public lands. The intent was to use the occurrence of the upcoming special election – a time when individuals in Montana would be more attuned to issues of public concern – as a mechanism for engaging the public on this issue of critical public concern. The essays were compiled and published as a twenty-three page insert that was distributed in three Montana newspapers on May 21, 2017 (the “Publication”).
3. This was our first experience with engagement in the political process and advocacy of this kind. When we commenced this project, we believe it to be constitutionally protected issue advocacy and did not believe it would implicate the federal campaign finance laws. Nonetheless, on May 20, 2017, I was informed by a friend that our group may be required to register our organization as a political committee with the Federal Election Commission (“Commission”). Accordingly, we promptly prepared a Statement of Organization and filed it with the Commission on May 22.
4. Neither Rob Quist, Rob Quist for Montana, nor any agent of the foregoing requested or suggested that Montana Writes for Public Lands prepare or distribute the Publication.
5. Neither Rob Quist, Rob Quist for Montana, nor any agent of the foregoing assented to Montana Writes for Public Lands’ decision to prepare or distribute the Publication.
6. All decisions regarding the distribution of the Publication, such as the decision of which newspapers would publish the Publication and the date of its distribution, were made by Mr. Bass, Mr. Schott, and I. Those decisions were made without input from Rob Quist,

Rob Quist for Montana, or any agent of the foregoing, and were not based on any nonpublic information provided by Rob Quist, Rob Quist for Montana, or any agent of the foregoing.

7. All decisions regarding the content of the first and last page of the Publication were made by Mr. Bass, Mr. Schott, and I. Those decisions were made without input from Rob Quist, Rob Quist for Montana, or any agent of the foregoing, and were not based on any nonpublic information provided by Rob Quist, Rob Quist for Montana, or any agent of the foregoing.

8. Each author was responsible for the content of the section of the Publication bearing his or her name, with Mr. Bass, Mr. Schott, and I providing editorial input on some of the sections. I determined the content of the section bearing my name, and received editorial input from Mr. Bass and Mr. Schott. All decisions regarding the content of my section were made without input from Rob Quist, Rob Quist for Montana, or any agent of the foregoing, and were not based on any nonpublic information provided by Rob Quist, Rob Quist for Montana, or any agent of the foregoing. As far as I am aware, none of the other contributors discussed the content of their sections with Rob Quist, Rob Quist for Montana, or any agent of the foregoing, or based their section on any nonpublic information provided by Rob Quist, Rob Quist for Montana, or any agent of the foregoing.

9. I have not served as a vendor, employee, or contractor to Rob Quist for Montana and, as far as I am aware, none of the other authors who contributed to the Publication has served as a vendor, employee, or contractor to Rob Quist for Montana.

10. I am aware that, on May 20, 2017, the *Bozeman Daily Chronicle* published an article by Eric Dietrich that stated: "The insert's distribution areas in southwest and northwest Montana are places where, consulting with the Quist campaign, the group thought they were likely to reach undecided voters, Davis said."

11. Though I spoke with Eric Dietrich about the Publication, I did not tell him that Montana Writers for Public Lands consulted with the Quist campaign about the Publication. Instead, I told him that I had discussed the publication with a volunteer for Rob Quist for Montana. That volunteer, named Joanne Gardner had, on a volunteer basis, organized a

fundraising event for Rob Quist for Montana. As far as I am aware, that was the extent of her involvement with Rob Quist or Rob Quist for Montana.

12. Ms. Gardner lives near me in Livingston, Montana. I met her when she approached me about making a political donation in connection with the event that she organized. In the course of our conversation, I mentioned that we were preparing the Publication and Ms. Gardner suggested that we distribute it in a newspaper in the Great Falls area. She did not indicate that she was acting on behalf of Rob Quist for Congress or Rob Quist, or that she had any knowledge of Rob Quist for Congress's nonpublic campaign plans, projects, activities or needs.

13. Montana Writers for Public Lands did not take Ms. Gardner's suggestion. Instead, we ultimately decided to distribute the Publication in the Bozeman Chronicle and in the northwestern part of the state in the *Daily Interlake* and *Western News*. This decision was based on our available budget and our own internal discussions of where the subject matter of the Publication would resonate the most.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed on July 21, 2017 at Livingston, Montana.


SEABRING DAVIS